

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-247520-D2 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: Joseph N. Pinder

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1498

Joseph N. Pinder

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-01.

By order dated 20 October 1964, an Examiner of the United States Coast Guard at Baltimore, Maryland suspended Appellant's seaman documents for one month outright plus three months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a general utilityman on board the USNS GENERAL HOYT S. VANDENBERG under authority of the document above described, on 5 September 1964, Appellant assaulted and battered utilityman De Souza.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence various documents as well as the testimony of De Souza and three other members of the crew.

In defense, Appellant offered in evidence his own testimony and that of another crew member. Both testified that Appellant kicked at De Souza after knocking him down.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered the probationary suspension mentioned above.

FINDINGS OF FACT

On 5 September 1964, Appellant was serving as a general utilityman on board the USNS GENERAL HOYT S. VANDENBERG and acting under authority of his document while the ship was in the port of Baltimore, Maryland. Although this is a public vessel, she had inspected by the Coast Guard and was operating in accordance with a Certificate of Inspection which included manning requirements.

About 0930 on 5 September 1964, Appellant interjected himself into an argument between

utilityman De Souza and another crew member. Appellant and De Souza became engaged in a heated argument which led to an exchange of abusive name-calling. De Souza, who is considerably older and smaller than Appellant, then struck Appellant on the face. Appellant retaliated by knocking down De Souza and kicking him while he was lying on the deck.

De Souza was given first aid for facial injuries suffered in the fight and sent to a hospital for further treatment. The only evidence of injury to Appellant was some swelling on the side of his face which had subsided by the time of the hearing five days later. De Souza's facial injuries were apparent when he testified at the hearing.

Appellant has no prior disciplinary record. He has been going to sea for approximately 25 years.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the order is excessive and not consistent with the findings of fact made by the Examiner.

APPEARANCE: Bernard G. Link, Esquire, of Baltimore, Maryland, of Counsel

OPINION

Regardless of the fact that the older man struck the first blow, it is clear that Appellant used excessive force to subdue his opponent and thereby was guilty of assault and battery. The record indicates that the point of reasonable force was probably passed by the time Appellant carried his attack so far as to knock De Souza to the deck. But if excessive force had not been exercised up to then, it definitely was used when Appellant kicked De Souza while he lay in a helpless condition. The kicking is not even denied by Appellant.

The contention that the order is unsupported by the findings and excessive is without merit. As indicated by the Examiner, the length of suspension imposed would have been longer except for Appellant's prior clear record.

ORDER

The order of the Examiner dated at Baltimore, Maryland, on 20 October 1964, is AFFIRMED.

W. D. SHIELDS
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 20th day of April 1965.

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